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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,365	03/02/2004	Denise R. Barbut	046,846-010	4265

  

34263	7590	07/08/2010
O'Melveny & Myers LLP		
IP&T Calendar Department LA-13-A7		
400 South Hope Street		
Los Angeles, CA 90071-2899		

  

EXAMINER	
DIXON, ANNETTE FREDRICKA	

  

ART UNIT	PAPER NUMBER
3771	

  

NOTIFICATION DATE	DELIVERY MODE
07/08/2010	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipcalendardept@omm.com  
cpacheco@omm.com  
rmanguray@omm.com



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*In re* Application of: BARBUT et al. )  
Application No. 10/792,365 )  
Filed: March 2, 2004 ) **DECISION ON PROTEST UNDER**  
For: TRANSPULMONARY SYSTEMIC ) **37 CFR §1.291**  
COOLING USING LIQUID MISTS )

This is in response to a protest in accordance with 37 CFR § 1.291 received April 5, 2010.

37 CFR § 1.291 states, in pertinent part:

- (a) A protest may be filed by a member of the public against a pending application...
- (b) The protest will be entered into the record of the application if, in addition to complying with paragraph (c) of this section, the protest has been served upon the applicant in accordance with §1.248, or filed with the Office in duplicate in the event service is not possible; and, except for paragraph (b)(1) of this section, the protest was filed prior to the date the application was published under § 1.211, or a notice of allowance under § 1.311 was mailed, whichever occurs first:
  - (1) If a protest is accompanied by the written consent of the applicant, the protest will be considered if the protest is matched with the application in time to permit review during prosecution.
- \*\*\*\*\*
- (g) Protests that fail to comply with paragraphs (b) or (c) of this section may not be entered, and if not entered, will be returned to the protestor, or discarded, at the option of the Office.

The application was published on July 14, 2005 and is abandoned. The protest was received on April 5, 2010. Therefore, the protest was not filed during the pendency of the application, and it was filed after the date the application was published under 37 CFR §1.211. The protest has not been accompanied by the written consent of the applicants so as to overcome the delay in filing.

Because of the defects noted, the protest papers will **not** be entered into the application file, and the Office will discard them, as permitted by 37 CFR § 1.291(g).

Any inquiry by the applicant regarding this decision should be directed to Josie A. Ballato, Quality Specialist at 571-272-3567.

Donald T. Hajec  
Director  
Technology Center 3700  
Mechanical Engineering, Manufacturing, Products and Designs